



## Australian Government

### Department of Defence

Chief Operating Officer

Freedom of Information and  
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Our reference: FOI 086/12/13

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

1. I refer to your letter of 30 August 2012, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*"...copies of documents relating to the contamination, and any subsequent remediation works undertaken, at the site located at 29 – 33 Woomera Avenue, Edinburgh Parks, South Australia ("the Site"). The Department of Defence ("the Department") owned the Site before it was sold to a third party and leased to my client. At the time the Department owned it, it was referred to the Defence Science and Technology Organisation Facility at First Street, Salisbury, South Australia.*

*We have previously been provided with a copy of the interim environmental audit report prepared by Golder Associates, dated 4 July 1997, (document reference number 96661003/32) ("Interim Report") relating to the Site... we request correspondence and other documents evidencing the condition of the site prior to its sale by the Department and any remediation taken in relation to the Site. In particular, we request a final version of the Interim Report and a copy of the final report."*

2. The purpose of this letter is to provide you with a decision in response to the request.

#### **FOI decision maker**

3. Mrs Kate Heinrich, Acting Director Ministerials & Coordination Defence Support Operations, is the authorised decision maker, under the FOI Act, in relation to your request.

#### **Document identified**

4. Mrs Heinrich identified one document matching the scope of your request, entitled *Allotment number 119, Marlu Curu Industrial Park Development, Site Contamination Status Report.*

## Decision

5. After examining the document identified at paragraph 4, Mrs Heinrich decided to release it with deletions made in accordance with section 22 of the FOI Act, on the basis that the deleted information is exempt under section 47F [public interest conditional exemptions - personal privacy] of the FOI Act.

6. In relation to the "final report" mentioned within your request, Mrs Heinrich is of the view that there is evidence that no such document ever existed. Accordingly, Mrs Heinrich decided to exercise her power under section 24A(1)(b)(ii) [documents do not exist] of the FOI Act to refuse the request on the basis that the document does not exist.

7. A copy of the document in the form approved for release is at Enclosure 1.

## Material taken into account

8. In making her decision, Mrs Heinrich had regard to:

- The content of the document in issue;
- Relevant provisions in the FOI Act;
- The *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines);
- *Principles on open public sector information* issued by the Information Commissioner; and
- Consultation response from the third party.

## Reasons for decision

### Section 47F [Public interest conditional exemptions - personal privacy]

9. Mrs Heinrich identified that the document, at paragraph 3, contains personal information, namely signatures and private email addresses, belonging to persons other than you. In accordance with subsection 47F(2), in determining whether the disclosure of this information would involve the unreasonable disclosure of personal information, Mrs Heinrich had regard to:

- a. the extent to which the information is well known;
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the documents; and
- c. the availability of the information from publicly accessible sources.

10. Against those criteria, Mrs Heinrich found that:

- a. the specific personal information is not well known; and
- b. this information is not readily available from publicly accessible sources.

11. Therefore, Mrs Heinrich decided that the disclosure of this material would involve the unreasonable disclosure of personal information belonging to another person.

12. Subsection 11A(5) of the FOI Act requires Defence to allow access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

### **Public interest conditional exemptions**

13. Section 11A(5) provides that conditionally exempt matter must be released unless, in the circumstances, access to that document at this time would, on balance, be contrary to the public interest.

14. In assessing whether disclosure of the material is, on balance, contrary to the public interest, Mrs Heinrich considered the range of factors that favour access to a document set out in section 11B(3) [public interest exemptions - factors favouring access] of the FOI Act. While information held by the Government is a national resource, the disclosure of the relevant personal information would not increase public participation in Government processes, nor would it increase scrutiny or discussion of Government activities.

15. Mrs Heinrich acknowledged that the personal information may be of some interest to you, however it would not inform public debate on any matter of public importance in any meaningful way.

16. Additionally, disclosure of the information would not promote oversight of public expenditure, nor would it allow you further access to your own personal information.

17. In coming to the above decision, Mrs Heinrich had regard to subsection 11B(4) [irrelevant factors] of the FOI Act, which lists factors which must not be taken into account in deciding whether access would, on balance, be contrary to the public interest. None of the factors Mrs Heinrich took into account were listed under subsection 11B(4) of the FOI Act.

18. Accordingly, Mrs Heinrich considered that, on balance, the public interest factors against disclosure outweigh the factors for disclosure of the exempt material contained in the document. Therefore, Mrs Heinrich decided that it would be contrary to the public interest to release the information considered exempt under subsection 47F(1) [public interest conditional exemptions - personal privacy] of the FOI Act.

### **Section 24A(1) of the FOI Act**

19. Mrs Heinrich noted section 24A(1) of the FOI Act, which states that:

**24A(1) Requests may be refused if documents cannot be found, do not exist or have not been received**

*Document lost or non-existent*

(1) An agency or Minister may refuse a request for access to a document if:

(a) all reasonable steps have been taken to find the document;  
and

(b) the agency or Minister is satisfied that the document:

(i) is in the agency's or Minister's possession but cannot be found; or

(ii) does not exist.

20. Paragraph 8.41 of the Guidelines also gives guidance as to what is required to be included within this statement of reasons to refuse a request under section 24A(1);

*8.41 The statement of reasons given to the applicant should sufficiently identify the document and give reasons as to why it cannot be found or why it is known that it no longer exists. The statement should describe the steps the agency took to search for it.*

21. A comprehensive search of the electronic Defence Record Management System and a search of hard copy files was undertaken by Mrs Heinrich and it was confirmed that no final report was ever created. Mrs Heinrich has informed us that the Senior Environmental Manager (South Australia) stated that 'there is no final report as the Interim Audit was the only one conducted by Golders'.

22. In accordance with section 24A(1), and paragraph 8.41 of the Guidelines, Mrs Heinrich is satisfied that "all reasonable steps" have been taken to locate the document. Accordingly, Mrs Heinrich is satisfied that no such document exists, and is refusing this request under section 24A(1)(b)(ii) of the FOI Act.

23. Copies of relevant sections of the FOI Act are at Enclosure 2.

### **Payment of Charges**

24. In our letter, dated 5 September 2012, the department estimated the cost associated with processing your request to be [REDACTED]. You agreed to pay charges for the administration of your request and paid the entire preliminary assessment (i.e. not just the deposit) on 19 September 2012.

25. Upon completion of your request, the actual amount for processing was determined to be [REDACTED]. Accordingly, you are entitled to a refund for the charges paid towards the processing of your request. To enable us to process your refund, could you please complete the form at Enclosure 3.

26. The original value, outlined above, was based on an assessment of four minutes per page to examine the documents (along with additional decision making time). Initially, the action area considered this to be an appropriate foundation for the assessment as the documents were believed to contain considerable sensitive information (such as financial and business information). However, upon further inspection, it was determined that the material within the documents was not as sensitive and complex as expected. Also, at the stage of formulating the preliminary assessment of charges, the number of pages matching the scope of your request was incorrectly calculated as being 128 pages. Accordingly, the final assessment of charges was considerably lower than the preliminary assessment.

### **FOI Disclosure Log**

27. In accordance with the requirements of section 11C [Publication of information in accessed documents] of the FOI Act, Defence is required to publish, on its website, information released under the FOI Act within 10 working days of the applicant being given access to documents. Defence will also publish the decision notice, with personal and business information deleted. The information published does not include personal information or the business, commercial, financial or professional affairs of any person if publication of that information would be unreasonable. Other information not published

also includes that which the Australian Information Commissioner determines is unreasonable to publish.

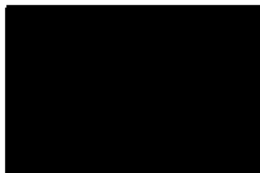
**Rights of review**

28. The FOI Act provides for rights of review of decisions. A copy of the fact sheet "Freedom of Information - Your Review Rights" is at Enclosure 4.

**Further advice**

29. Should you have any questions relating to the matter, please contact me, either by telephone on (02) 6266 4713 or via email to [FOI@defence.gov.au](mailto:FOI@defence.gov.au).

Yours sincerely



Phillip Connelly  
Case Officer  
Freedom of Information

2 <sup>November</sup>  
~~October~~ 2012

**Enclosures:**

1. Copy of the document in the form approved for release.
2. Relevant sections of the FOI Act.
3. Refund form.
4. Fact Sheet: Freedom of Information - Your Review Rights